February 23, 2016

To: Members of the Housing Committee
Fr: Connecticut Bankers Association
Contacts: Tom Mongellow, Fritz Conway

Re: H.B. No. 5339 AN ACT CONCERNING PENALTIES FOR THE FAILURE TO REGISTER A RESIDENTIAL PROPERTY BY A FORECLOSING PARTY.

Position: Oppose

This bill would increase the penalty provisions of the CT 2011 Neighborhood Protection Act from $100 to $1000 for not registering a new foreclosure "action" with the municipality - and from $250 to $1250, for not registering after the foreclosure is completed and the title is vested in the new owner of the property.

The CBA respectfully disagrees with these penalty increases.

The underlying 2011 statute was the result of expansive and thoughtful negotiations with the Legislature and all stakeholders, at the peak of the mortgage foreclosure crisis. Those negotiations included robust discussions on what was the appropriate level of the fines, in the event that a foreclosure was *not* recorded in a towns land records, as required under the Act.

Importantly, the 2011 legislation was enacted as a *third* tool to identify foreclosing parties. The other tools include conducting a land record search of "Lis Penden" foreclosure filings (maintained by the Town Clerks in each municipality) and using the nationwide MERS electronic recording system. Not only are these two other tools readily available - and being used by municipalities on a daily basis (The MERS system is *made available at no cost* to towns and cities), both those systems are continually improved upon for ease of use and completeness of information.

In many cases, the foreclosing parties contact information can be readily found in both the Land Records and the MERS system, as well as the Foreclosure Registration list, maintained in the land records. Imagine a $1000 fine due to a clerical error, where a foreclosure is not "registered" under the act – but - the contact information is easily obtained from the two other sources – at the same Town Hall location. That is just one example of why the fines were set to a reasonable level in 2011.

Additionally, new foreclosure filings have continued to drop to the pre-financial crisis levels of 2006. Indeed, the volume of in-process foreclosures has declined over 25% from the 2014 to the end of 2015. And, completed foreclosures plummeted 34% in the same time period (source: Core Logic/Htfd Business Journal).

With three search tools available, and the foreclosure crisis subsiding, the $1000 increase to each penalty is unfair. Particularly, when you consider the first filing requirement - when a foreclosure is started. *In many cases the filing is unnecessary due to borrower paying off the delinquency. This brings the mortgage back into good standing and cancels the foreclosure action.* The bank's outreach and reinstatement process, along with loan modifications or restructurings often happen quickly - within three months after the start of the foreclosure. *A $1000 filing penalty - for a foreclosure that may never happen is unfair.* And while the State's Judicial Foreclosure Mediation Program averages two to three years to complete, it reports an over a 60% success rate of avoiding foreclosures, once again showing how a large penalty increase is unnecessary.

For all these reasons, we urge the Committee to not to change the negotiated penalty structure of the 2011 Act and oppose HB 5339.